IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

Crl.MC.No. 2500 of 2006()

AGAINST THE ORDER IN CC 228/1998 IN
LP.35/2001 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

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PETITIONER: ACCUSED

RIYAS, S/O.SAINULABDEEN,
KALLUVETTAMKUZHI VEEDU, MULLUVILA CHERRY,
VADAKKEVILA VILLAGE, KOLLAM TALUK,
KOLLAM DISTRICT.

BY ADV. SRI.C.R.JAYAKUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
CIRCLE INSPECTOR OF POLICE, KOLLAM EAST POLICE
STATION, THROUGH BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. MUMTHAS, D/O.FATHAHUDEEN,
KUNNUVILA VEEDU, MUTTAKKAVU, NEDUMPANA P.O,
KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.2500 OF 2006

Dated this the 27th day of November, 2006.

ORDER

The petitioner is the brother-in-law of the defacto complainant and the prosecution is under Section 498 (A) read with 34 I.P.C. The petitioner was the 5th accused shown in the final report. Cognizance was taken. But the petitioner was not available for trial. In these circumstances, the trial against the co-accused proceeded. Accused 1 to 4 and 6 were found not guilty and acquitted. The petitioner was not available at that stage. The case against the petitioner has been split up and subsequently transferred to the list of long pending cases. The petitioner now wants the proceedings against him to be quashed.

2. What is the reason ? The acquittal of the co-accused by itself cannot be a valid and sustainable ground for quashing of proceedings as has been held in **Moosa v. Sub Inspector of Police** [2006(1) KLT 552 (F.B)]. The learned counsel for the petitioner submits that the defacto complainant has compounded the offence against the petitioner herein also. If that be so, the respondent has to come before this Court personally or through pleader and report this Court that the matter has been settled. In that even the dictum in **B.S.Joshy v. State of Haryana** [A.I.R(2003) S.C 1386] could have been involved.

Though sufficient opportunity has been granted, the respondent has not entered appearance nor is there any statement filed by her before this Court to report that there has been composition of the offence in so far as it relates to the petitioner. The learned counsel for the petitioner now submits that the petitioner would face trial before the court below as he is not able to get the composition effected by the defacto complainant. The mere fact that she has compounded the offence as against the other accused persons is no reason for this Court to lightly assume that she must have compounded the offence against the petitioner herein also. In these circumstances, the prayer for quashing of proceedings cannot be accepted.

3. Finally the learned counsel for the petitioner only submits that there may be a direction to the learned Chief Judicial Magistrate, Kollam to dispose of the case against the petitioner as expeditiously as possible. He further submits that a non bailable warrant of arrest is pending against him. The learned Magistrate may be directed to consider his application for bail expeditiously and on merits.

4. I am satisfied that the said request is legitimate. But the petitioner must appear before the learned Magistrate and

explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for bail expeditiously and on merits. Every court must do the same. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

5. In the result, this Crl.M.C is dismissed. But with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to dispose of the application for bail expeditiously and on merits - on the date of surrender itself. The learned Magistrate must also consider the petitioner's request for expeditious disposal of the case against him and pass appropriate orders.

R.BASANT
JUDGE

rtr/